

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
MAY 4, 2021**

**CALL TO ORDER
6:02 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:01 p.m. at the 2nd Floor Conference Room of the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Ole Netteberg, Gina Klempel, Tobias Liechti, Cal Dyck and Roger Noble. Mark Mussman, Donna Valade, Erin Appert, Erik Mack, and Laura Mooney represented the Flathead County Planning & Zoning Office.

There were 12 members of the public in attendance at the meeting and an unknown number of members of the public in attendance over Zoom.

**APPROVAL OF
MINUTES
6:03 PM**

Klempel motioned, seconded by Liechti, to approve the April 6, 2021 minutes as written.

The motion passed unanimously by quorum.

**PUBLIC COMMENT
(Public matters that are
within the jurisdiction of the
Board 2-3-103 M.C.A)
6:03 PM**

None

**JAMES GELORMINO
(FZV-21-03)
6:03 PM**

A request from James Gelormino for a variance to Section 3.14.040(3)(B) and Section 4.13.060 of the Flathead County Zoning Regulations (FCZR), to the front yard setback for a detached accessory structure and to the driving lane width for mini-storage on property located at 628 Willow Glen Drive, in Kalispell, MT. The property is located within the Willow Glen Zoning District and is currently zoned R-5 (Two-Family Residential). The total acreage involved is approximately 2.35 acres.

**STAFF REPORT
6:04 PM**

Erin Appert reviewed the Staff Report FZV-21-03 for the board.

BOARD QUESTIONS
6:07 PM

None

**APPLICANT
PRESENTATION**
6:07 PM

James Gelormino, 628 Willow Glenn, was the applicant. He stated he was not asking for anything that was not already there. The other structures existed within the setbacks. It was a misunderstanding on his part during the conditional use permit process. He referenced Figure 5 in the staff report and stated there would still be a landscape buffer. Meeting the setback would prevent him from completing his project. He stated he was not asking for anything out of the ordinary and could forward photos of other structures and fences within the setbacks along Haven Drive.

BOARD QUESTIONS
6:10 PM

None

**AGENCY COMMENTS
COMMENT**
6:10 PM

No public agencies were present to comment. Written comments were reviewed in the staff report.

PUBLIC COMMENT
6:10 PM

None

BOARD DISCUSSION
6:11 PM

Noble stated, between the nine negative findings and the Flathead County Road and Bridge Department's comment, he was having a difficult time approving the variance.

Klempel and Liechti agreed.

Dyck concluded that, with that discussion, they would vote on accepting the finding of facts as written.

**MAIN MOTION TO
ADOPT F.O.F.
(FZV-21-03)**
6:13 PM

Noble made a motion, seconded by Klempel, to accept Staff Report FZV-21-03 as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F.
(FZV-21-03)
6:13 PM**

Motion passed unanimously on a roll call vote.

**BOARD DISCUSSION
6:13 PM**

With the understanding that the finding of facts were negative, Dyck said he would entertain a motion to deny the variance.

**MOTION TO DENY
(FZV-21-03)
6:13 PM**

Dyck made a motion, seconded by Liechti, to deny FZV-21-03.

**ROLL CALL TO DENY
(FZV-21-03)
6:14 PM**

Motion passed unanimously on a roll call vote.

**ANTHONY SUNDH
(FCU-21-02)
6:14 PM**

A request by Anthony Sundh for a conditional use permit for a manufactured home park within the Evergreen Zoning District. The applicant is proposing a second mobile home on property located at 315 Helena Flats Road in Evergreen. The parcel contains approximately 4.34 acres.

**STAFF REPORT
6:15 PM**

Erik Mack reviewed the Staff Report FCU-21-02 for the board.

**BOARD QUESTIONS
6:17 PM**

Klempel asked if the 12' driveway was an appropriate for ingress and egress. Staff discussed statistics and felt it was appropriate and in line with what one would get with a single family residence.

**APPLICANT
PRESENTATION
6:19 PM**

Mikel Siemens with Core Water Consulting, LLC, 490 E. Montana Street, represented the applicant. She had prepared a COSA rewrite on behalf of the applicant, in which he wanted sanitation systems for himself and for his father. During the process they had realized there were some zoning violations. They decided to do an application for a mobile home park instead. She discussed, in great detail, the specifics in which they had gone through for approval. It was not the applicant's intent to lease the property, instead he wanted to provide a home for his father to live.

BOARD QUESTIONS
6:20 PM

Noble asked if both trailer houses were going to have separate sewer systems. They answered that it had been approved for separate systems.

PUBLIC COMMENT
6:22 PM

None

BOARD DISCUSSION
6:22 PM

Liechti felt that it looked good.

Noble did not see any issues.

Klempel agreed as well.

**MAIN MOTION TO
ADOPT F.O.F.
(FCU-21-02)**
6:23 PM

Noble made a motion, seconded by Klempel, to accept Staff Report FCU-21-02 as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F.
(FCU-21-02)**
6:23 PM

Motion passed unanimously on a roll call vote.

**MOTION TO APPROVE
(FCU-21-02)**
6:23 PM

Klempel made a motion, seconded by Noble, to approve FCU-21-02.

**ROLL CALL TO
APPROVE
(FCU-21-02)**
6:23 PM

Motion passed unanimously on a roll call vote.

**GREGORY & ADRIA
STRABLE
(FZV-21-02)**
6:24 PM

A request by Gregory & Adria Strable for an after-the-fact variance to Section 3.11.040(3)(A) of the Flathead County Zoning Regulations (FCZR), to encroach in the rear setback for the single-family dwelling and the retaining wall as it is over three feet in height and must meet the 'Detached Accessory Structures' rear setbacks. The property is located at 1332 Bigfork Stage, Bigfork, MT within the Bigfork Zoning District. The property is zoned R-2 (One-Family Limited Residential) and the total acreage involved in the request is approximately 0.692 acre.

STAFF REPORT
6:24 PM

Donna Valade reviewed the Staff Report FZV-21-02 for the board.

BOARD QUESTIONS
6:28 PM

None

**APPLICANT
PRESENTATION**
6:28 PM

Greg Strable was the applicant and reiterated they had applied for a new septic permit and was unaware the permit could expire. He stated the building area was limited and the retaining wall height was necessary due to the topography. The earthwork to create more of a building space was extensive and he reviewed what had been done to date to make the area more buildable for the structure and retaining wall. They had talked with the adjoining property owner to rectify the damage to her fence. Their topography was not similar to other properties in the area. He read the statute of limitations which he had emailed the Planning Office. He had built the retaining wall too close to the property line and too high.

James Coombs, 406 S. Illinois, contractor, discussed that they had met several times on the property with Wendee Jacobs concerning the topography and they had to ask for a variance for their septic system. He believed that Planning and Zoning (P&Z) would have been contacted concerning the variance and thought P&Z would have caught the setback at that time. He had called P&Z concerning permits and had been told he did not need building permits. Now they were here because of a civil issue with the neighbor. They had 13 feet of stem wall, it was hard to have that amount of stem wall unprotected. They were 12 feet off the property line and that was based off what the County had told them. He was baffled. They had called the County, applied for the permit, gone through the variance procedure, and the engineer had to resubmit the plans when they applied for the variance.

BOARD QUESTIONS
6:35 PM

None

**AGENCY COMMENTS
COMMENT**
6:36 PM

No public agencies were present to comment. Written comments were reviewed in the staff report.

PUBLIC COMMENT
6:37 PM

Carin Edwards, 624 Peaceful Dr., spoke in opposition of the application. She was the property owner below the subject property. She reviewed the history of the work including excavation 20 ft. onto her property, bringing in filler and using her fence as a retaining wall, the wall had failed twice, they had also cut and taken down parts of her fence. She had to take into account her property and property values and she was also concerned about the septic system as the property was small.

BOARD DISCUSSION
6:40 PM

Klempel wondered if anyone had surveyed the property. She received mixed answers. She asked if they had any updated information from Environmental Health. Valade said there was a septic permit at the P&Z office waiting for sign off, however the site plan was a violation currently as the house was shown about 10 feet from the property line.

Noble felt Wendee, with Environmental Health, was very thorough and would give correct information regarding setbacks. He asked Valade if the retaining wall and house were separate violations. Valade said they were both encroaching in the setbacks. She explained a variance for a septic system went before the Board of Health and P&Z would not necessarily be notified. There were two places which needed to be contacted for developing property. One was Environmental Health for septic and wells, the other was P&Z for zoning setbacks, permitted and conditional uses.

Liechti asked if the applicant concurred that the property line was the fence. The applicant felt that it was "close". Liechti asked if an engineer had designed the retaining wall. Applicant said no. Liechti asked the applicant if they had considered a Boundary Line Adjustment with the neighbor and the applicant replied they had not. They wanted to work things out with the neighbor. Coombs interjected and recounted the difficulties they had with the neighbor.

Noble asked how many bedrooms were in the house and they answered there were four (4).

Dyck asked the owner if he understood that the 10' septic setback was different than the 20' structure setback.

Coombs wanted to add that the house was a shell right now, the house needed to be finished before septic could be put in due to topography.

BOARD BREAK
6:53 PM

BOARD DISCUSSION
7:04 PM

Dyck felt bad for all parties involved. He understood that there were two violations, including the retaining wall being one and the house being only 12' off the property line was another. It appeared there had been a misunderstanding. He could find several ways to deal with the retaining wall height, the house was more complicated.

The board and Valade discussed how the two variance requests could be handled and possibly separated.

Noble shared his sentiments and that the whole situation was a mess. He concurred that the retaining wall could be dealt with but the house was another story. He wondered if they could separate the two issues.

Klempel was concerned about the chain link fence and voiced that a boundary line adjustment would make it go away but that was a civil issue and they had no jurisdiction with that.

Liechti agreed. They could not force a boundary line adjustment. The previous failures of the retaining wall concerned him and recommended the owners had it engineered. He believed all 9 findings were negative and there was a typo in FOF #6.

Dyck also concurred. His concern was the retaining wall. The statute of limitations issue was out of their scope as a board. It was a legal issue. It was a complicated mess. There was a solution with the retaining wall, it could be lowered.

MAIN MOTION TO
ADOPT F.O.F.
(FZV-21-02)
7:12 PM

Liechti made a motion, seconded by Klempel, to accept Staff Report FZV-21-02 as Findings-of-Fact.

ROLL CALL TO ADOPT
F.O.F.
(FZV-21-02)
7:12 PM

Motion passed unanimously on a roll call vote.

MOTION TO DENY
(FZV-21-02)
7:13 PM

Liechti made a motion, seconded by Klempel, to deny FZV-21-02.

ROLL CALL TO DENY
(FZV-21-02)
7:13 PM

Motion passed unanimously on a roll call vote.

EAGLE BEND GOLF
CLUB, LLC
(FCU-21-03)
7:14 PM

A request from Eagle Bend Golf Club, LLC for a conditional use permit for an extension of an administrative conditional use permit (FACU-20-05) for properties located at 279 Eagle Bend Drive and adjoining golf course near Bigfork, MT within the Bigfork Zoning District. The applicant is requesting the permit to allow for the continued use of two double wide mobile trailers used for a pro-shop/golfer check-in and for administrative offices, mobile restroom trailer, mobile kitchen and bar trailer(s), two small mobile trailers for dry and refrigerated storage, and a large canopy tent used as a dining area as a temporary use/buildings. The property is zoned RC-1 (Residential Cluster).

STAFF REPORT
7:15 PM

Donna Valade reviewed the Staff Report FCU-21-03 for the board.

BOARD QUESTIONS
7:16 PM

None

APPLICANT
PRESENTATION
7:16 PM

Kevin Malloy with Carver Engineering, 1995 3rd Ave E, represented the applicants. He concurred with the finding of facts. He reviewed the progress which had been made to date. They expected to have reconstruction done by Thanksgiving.

BOARD QUESTIONS
7:17 PM

None

PUBLIC COMMENT
7:18 PM

None

BOARD DISCUSSION
7:18 PM

The board did not have any issues with the project.

**MAIN MOTION TO
ADOPT F.O.F.
(FCU-21-03)**
7:19 PM

Noble made a motion, seconded by Klempel, to accept Staff Report FCU-21-03 as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F.
(FCU-21-03)**
7:19 PM

Motion passed unanimously on a roll call vote.

**MOTION TO APPROVE
(FCU-21-03)**
7:19 PM

Noble made a motion, seconded by Klempel, to approve FCU-21-03 as amended.

**ROLL CALL TO
APPROVE
(FCU-21-03)**
7:19 PM

Motion passed unanimously on a roll call vote.

**ADAM BRITT
(FCU-21-04)**
7:20 PM

A request from Adam Britt for a conditional use permit for 'dwellings, cluster (attached or detached when greater than 4 dwelling units/buildings)' and 'Tourist accommodation units' on property located within the Bigfork Zoning District. The property is located at 615 Holt Drive, Bigfork MT and is zoned RC-1 (Residential Cluster) and contains approximately 1.7 acres.

STAFF REPORT
7:20 PM

Erin Appert reviewed the Staff Report FCU-21-04 for the board.

BOARD QUESTIONS
7:23 PM

None

**APPLICANT
PRESENTATION
7:24 PM**

Adam Britt, 805 Eagle Ln., was the applicant. He had consulted with APEC but was not in a contract with them as their schedule was out until the middle of May. They were in agreement that they would start the COSA rewrite in May. He requested amendments to Finding of Fact #7 and Condition of Approval #5 to not require paving of the driving lane. He recounted his conversation with the Flathead County Road & Bridge Department and the approved approach permit.

**BOARD DISCUSSION
7:27 PM**

Liechti recused himself due to a potential conflict of interest. Dyck informed the applicant that a unanimous vote would be required for approval and the application could be tabled until the next meeting. Britt confirmed he wanted to move forward with the application at this point in time. Board and staff discussion ensued regarding Liechti recusing himself and concluded he will participate in board discussion but abstain from voting.

**PUBLIC COMMENT
7:33 PM**

Karen Sykes, 1034 Lakepoint Dr., spoke in opposition of the application. She was on the Lake Pointe HOA and was directly across from the property. The majority of the HOA did not provide covenants for short term rental. She was concerned about the property values being decreased. She felt short term rentals were out of character for Eagle Bend area. She was concerned about the lack of pavement and the proposal was incongruent with the character of Eagle Bend.

Christine VanFossan, 63 Lake Pointe Way, spoke in opposition of the application. She was in agreement with Sykes. She was also concerned about the potential density being up to 36 dwellings. She knew Bigfork Water Sewer and Fire were in opposition of the proposal. It was a crowded area. She was concerned about the pedestrians who used Holt Drive to access the Bigfork Beach. She was also concerned about the icy road conditions during the winter time. She was concerned over the potential noise and parties.

**APPLICANT REBUTTAL
7:41 PM**

Britt clarified that there were a total of 9 dwelling units. Dyck explained that without the conditional use permit, he would be allowed 4. Britt explained his reasoning for deciding on 9.

**STAFF REBUTTAL
7:41 PM**

None

BOARD DISCUSSION
7:42 PM

Klempel was concerned about the comment from Bigfork Water & Sewer District. Dyck called on the applicant to address this. Britt stated Julie with the Bigfork Water & Sewer District attended the BLUAC meeting and clarified there were two water and two sewer hookups available for this lot and available for hook-up. The statement regarding there being no excess capacity meant they were not willing to add additional water or sewer stub outs on the property. There was capacity for the proposal.

Liechti did not have anything to add.

Klempel asked the applicant how many people would be accommodated in each unit. Britt responded each unit would have one bedroom and a sleeping loft and a maximum of four occupants. Klempel asked for clarification regarding kitchen and bathroom facilities. Britt responded there will be kitchen and bathroom facilities in each unit.

Noble stated some of the public comment had some pertinence. The proposed nine (9) short-term rental units were not compatible with the single-family residential character of the neighborhood. His biggest concern was safety. There was a lot of traffic and pedestrians and it was a narrow road. He referenced the written comment from Eagle Bend HOA.

Liechti did not have anything to add.

Klempel stated she had taken all of the public comments into consideration and believed short-term rentals had the potential to be invasive.

Noble referenced that BLUAC had recommend denial and felt they had a little more credence because it was right in their backyard.

MOTION TO ADOPT
F.O.F.
(FCU-21-04)
7:49 PM

Noble made a motion, seconded by Klempel, to accept Staff Report FCU-21-04 as Findings-of-Fact.

ROLL CALL TO ADOPT
F.O.F.
(FCU-21-04)
7:49 PM

Motion failed on a 1-2 roll call vote. Dick and Noble dissented. Liechti abstained.

MOTION TO ADOPT
F.O.F. AS
RECOMMENDED BY
BLUAC
(FCU-21-04)
7:50 PM

Noble made a motion, seconded by Klempel, to accept Staff Report FCU-21-04, as recommended by BLUAC, as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F. AS
RECOMMENDED BY
BLUAC (FCU-21-04)
7:51 PM**

Motion passed on a 3-0 roll call vote. Liechti abstained.

**MOTION TO DENY
(FCU-21-04)
7:52 PM**

Noble made a motion, seconded by Klempel, to deny FCU-21-04.

**ROLL CALL TO DENY
(FCU-21-04)
7:52 PM**

Motion passed on a 3-0 roll call vote. Liechti abstained.

**OLD BUSINESS
7:55 PM**

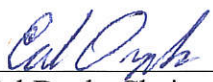
None

**NEW BUSINESS
7:55 PM**

None

**ADJOURNMENT
7:55 PM**

The meeting was adjourned at approximately 7:55 pm on a motion by Noble.
The next meeting will be held at 6:00 pm on June 1, 2021.



Cal Dyck, Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 6/1/2021